

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

JAMES JONES, et al.,	:	
Plaintiffs	:	
	:	
v.	:	Civil No. AMD 07-3010
	:	
CITY OF FREDERICK, MD, et al.,	:	
Defendants	:	
	:	
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MEMORANDUM OPINION

Plaintiffs James and Sharon Jones instituted this action pursuant to 42 U.S.C. § 1983 and under state law seeking damages against the City of Frederick, Maryland, a Frederick police detective, defendant Loumis Alston, and a host of additional defendants. Plaintiffs' claims arise out of the mistaken arrest and indictment of Mr. Jones for the robbery of a credit union.\* Now before the court is, *inter alia*, Detective Alston's motion to dismiss or in the alternative for summary judgment, which is fully briefed and shall be treated as a motion for summary judgment. Although there has been no discovery, the court is entirely satisfied that plaintiffs have not been prejudiced in their ability to respond to Detective Alston's motion, and that, under the circumstances of this case, consideration of the motion should not be continued to permit discovery. For the reasons set forth herein, Detective Alston's motion shall be granted in part and a judgment of dismissal with prejudice shall be entered as to the federal claims. The state law claims shall be dismissed for lack of jurisdiction.

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\*Plaintiffs have sought to file a further amended complaint in order to join as a defendant yet another private individual who contributed to the investigation of Mr. Jones as the perpetrator of the robbery for which he was erroneously arrested. For the reasons stated in text, because as a matter of law Detective Alston committed no federal constitutional violation in his investigation of the robbery or in his decision to obtain an arrest warrant, plaintiffs clearly have failed to state a federal claim against any individual, non-state, actor or against Detective Alston's employer, the City of Frederick.

## I.

A party is entitled to summary judgment on all or any part of a claim as to which there is no genuine issue of material fact and as to which the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In other words, if there clearly exist factual issues “that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party,” then summary judgment is inappropriate. *Anderson*, 477 U.S. at 250. The moving party bears the burden of showing that there is no genuine issue as to any material fact. Fed.R.Civ.P. 56(c); *Anderson*, 477 U.S. at 256.

## II.

Viewed in the light most favorable to plaintiffs, the material facts are as follows.

On August 1, 2006, an armed man robbed the Spectrum Federal Credit Union (“Spectrum”) in Frederick. Detective Alston responded to Spectrum’s hold-up alarm together with other law enforcement officers. The officers spoke with and obtained statements from a number of witnesses at the scene. The witnesses generally described the robber as a tall African-American male in his early thirties who was wearing eyeglasses and missing a front tooth. Also, the officers reviewed Spectrum’s surveillance cameras that had recorded a portion of the robbery and had captured images of the individual responsible for the crime. The images captured on the surveillance cameras reflect the description of the armed robber that was provided by the witnesses.

On August 4, 2006, a bank employee who had been present during the robbery notified Detective Alston that another Spectrum employee recognized the person on the surveillance camera image. Alston was informed that the robbery suspect was known as “James,” a former worker at

Burlington Coat Factory. Alston went to Burlington Coat Factory, where employees identified the man in the surveillance photo as plaintiff James Jones. Thereafter, several additional persons identified the man in the surveillance image as plaintiff James Jones. Detective Alston then determined that law enforcement had a photograph of plaintiff on file. The file photograph was not inconsistent with the image taken from Spectrum's surveillance cameras; it included the missing front tooth that witnesses had described.

Based on his investigation, Alston completed an application for statement of charges and upon its presentment to a court commissioner, the commissioner issued an arrest warrant for plaintiff. Plaintiff was arrested at his residence and immediately asserted his innocence. On August 8, 2006, Detective Alston constructed photo arrays which included plaintiff's photograph. At least three Spectrum employees identified plaintiff's photograph in the arrays as the man who robbed Spectrum on August 1, 2006.

On August 30, 2006, plaintiff was indicted on charges arising out of the robbery and he was detained in custody. On February 21, 2007, the State's Attorney learned that an individual other than plaintiff had confessed to the Spectrum robbery. The charges against plaintiff were dismissed.

### III.

In their amended complaint, plaintiffs seek damages in 11 counts against Detective Alston, the City of Frederick, and virtually all of the witnesses who erroneously identified Mr. Jones as the robber. Some defendants have filed answers, some have filed motions to dismiss, and some have not yet been served. Nonetheless, as set forth herein, because plaintiffs' federal claims manifestly lack merit, the court will dismiss those claims with prejudice and dismiss the state law claims without prejudice.

A.

Plaintiffs assert two federal claims: one proceeds on the theory that Detective Alston deprived Mr. Jones of his Fourth Amendment right to be free from an unreasonable seizure insofar as he was arrested; the other proceeds on the theory that Detective Alston deprived Mr. Jones of his Fourteenth Amendment right to due process of law insofar as Mr. Jones was indicted and detained (which plaintiffs have labeled as a federal “malicious prosecution” claim).

B.

There seems to be no room for doubt that Mr. Jones has been grievously victimized by the erroneous eyewitness accounts of the witnesses of the robbery and of the persons who viewed the surveillance images of the robbery and the photo arrays. Nevertheless, whether or not plaintiffs’ state-law claims have legs, plaintiffs’ federal claims falter on well-settled legal principles that have been clearly articulated and applied by the Supreme Court and the Fourth Circuit in cases that in material respects are indistinguishable from the case at bar. *See Baker v. McCollan*, 443 U.S. 137 (1979); *Carter v. Baltimore County, MD*, 95 Fed.Appx. 471, 2004 WL 626820 (4th Cir. March 31, 2004)(unpublished); *see also Mitchell v. Aluisi*, 872 F.2d 571 (4th Cir. 1989).

As for the unreasonable seizure claim, the undisputed facts establish as a matter of law that there was probable cause, based on witness interviews and the use of photographs, to believe that Mr. Jones committed the robbery. “The probable-cause standard is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (citing, *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). Detective Alston’s decision to seek, and the decision of the state court commissioner to issue, an arrest warrant under the circumstances

presented here, is simply unassailable as a matter of Fourth Amendment jurisprudence. *Id.*

Plaintiffs' assertion that Mr. Jones was deprived of his right, protected by the Fourteenth Amendment, not to be prosecuted and/or detained without due process of law, fares no better. *Cf. Baker*, 443 U.S. at 145 (“[T]he Constitution does not guarantee that only the guilty will be arrested.”); *and see id.* (“[T]he Fourteenth Amendment does not protect against deprivations of liberty . . . [only those] without due process of law.”); *Carter*.

In the instant case, Detective Alston spoke with multiple witnesses to the armed robbery who provided statements and descriptions. The statements described a tall African-American male in his early thirties who was wearing eyeglasses and missing a front tooth. Detective Alston also reviewed Spectrum's surveillance cameras that recorded a portion of the robbery and captured images of the individual responsible for the crime. The individual in the surveillance images closely matched the descriptions provided by the witnesses. Next, Alston was informed that a Spectrum employee recognized the person in the surveillance photograph as “James,” a former worker at Burlington Coat Factory. Alston went to Burlington Coat Factory where employees identified the man in the surveillance photo as plaintiff James Jones. After several other persons identified the man in the surveillance photo as “James Jones,” Alston went to police records to determine if there was a picture of him on file. There was a photo on file, and it matched the description given by the witnesses as well as the image taken from Spectrum's surveillance cameras, including the unique characteristic of missing a front tooth.

Based on the totality of the circumstances, it cannot be said that no reasonable detective would have concluded that there was probable cause to apply for an arrest warrant.

### III.

Plaintiffs have failed in their effort to “plead around” *Baker* and *Carter*. They have attempted to do so by pointing to alleged inconsistencies between certain of Mr. Jones’s attributes, e.g., his height, and those of the robber, and by making conclusory allegations that Detective Alston’s investigation was “hasty” and “not thorough,” and that his application for a statement of charges and an arrest warrant were “false,” but these attempts are unavailing. The Fourth Circuit recently lamented, and not for the first time, frequent attempts to “constitutionalize” state-law claims that sound in negligence and/or gross negligence. *Waybright v. Frederick County, MD*, --- F.3d ---, 2008 WL 2232274 (4th Cir. June 2, 2008). Plainly, for the reasons set forth, the court’s duty here is to dismiss the ostensible federal claims and, in the absence of complete diversity of citizenship, to decline to exercise supplemental jurisdiction over plaintiffs’ state-law claims. *Id.*; *see* 28 U.S.C. § 1367(c)(3); *see generally Andrews v. Anne Arundel County, Md.*, 931 F.Supp. 1255, 1267-68 (D.Md.1996), *aff’d*, 114 F.3d 1175, 1997 WL 321573 (4th Cir.) (table), *cert. denied*, 522 U.S. 1015 (1997). An Order follows.

Date: June 19, 2008

/s/  
Andre M. Davis  
United States District Judge